

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

**COMMENTS OF TRACFONE WIRELESS, INC.
IN SUPPORT OF JOINT PETITION TO PAUSE IMPLEMENTATION
OF DECEMBER 2019 LIFELINE MINIMUM SERVICE STANDARDS
PENDING FORTHCOMING MARKETPLACE STUDY**

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I. INTRODUCTION

Proposed as a way of providing “reasonable comparability” of services to Lifeline subsidy recipients, Lifeline Minimum Service Standards (“MSS”) have strayed far from that purpose and now threaten to wholly undermine the Lifeline program and its goal of bringing affordable telecommunications services to low-income Americans. As TracFone has commented in other proceedings, the Lifeline MSS have increasingly become detrimental to the Lifeline program and the consumers who depend on it.¹ The more than four-fold increase in the minimum required broadband data usage allowance and the phase-down in support for voice services set to take place in December 2019 will seriously intensify the threat the MSS pose to the viability of the Lifeline program, and TracFone agrees with the Joint Petition of CTIA et al. that the Federal Communications Commission’s (“Commission’s”) Wireline Competition Bureau (“Bureau”) should pause implementation of these changes pending further study.²

II. TRACFONE SUPPORTS THE JOINT PETITION BECAUSE THE UPCOMING CHANGES TO THE MSS WILL DRASTICALLY LIMIT CONSUMER CHOICE AND ARE ANTICOMPETITIVE

The MSS limit consumer choice by driving up costs and eliminating incentives for offering certain types of Lifeline services, which are almost exclusively provided by wireless resellers and overwhelmingly preferred by Lifeline subscribers. With providers increasingly

¹ See, e.g., TracFone Wireless, Inc., Renewed Motion for Declaratory Ruling or for Waiver for the Purpose of Conducting a Market Test of Consumer Demand for Lifeline Service Offerings, WC Docket Nos. 17-287, 11-42, 09-197 (filed July 5, 2018); Reply Comments of TracFone Wireless, Inc., WC Docket Nos. 17-287, 11-42, 09-197 (filed September 14, 2018) (“2018 Reply Comments”); Comments of TracFone Wireless, Inc. on *Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, 2017 WL 6015800 (Dec. 1, 2017), pp. 65-66 (filed February 21, 2018).

² See Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket No. 11-42 et al. (filed June 7, 2019) (“Joint Petition”).

unable to offer preferred services to Lifeline subscribers, the Lifeline program as a whole faces potential catastrophe.

A. The MSS Limit Consumer Choice by Making Lifeline Service Plans Preferred by Lifeline Subscribers Unavailable.

A legacy of the prior Administration's paternalistic/command and control attitude toward low-income consumers, the MSS is now requiring those consumers to obtain data plans that provide for almost 9 GB per month regardless of the individual's usage patterns and needs, and phasing out subsidies for voice services regardless of whether customers prefer those over data services. If the Commission does nothing to stop the current escalation, starting on December 1st, 2019, any qualified low-income customer who wishes to participate in the Lifeline program and receive the \$9.25 per month subsidy will not be able to choose mobile data plans that offer anything less than 8.75 GB per month, which have an average retail cost of roughly \$30 per month. Gone will be the options of any free Lifeline service plans that offer voice, text, or data at no additional charge to low-income consumers – plans that are currently chosen by over 70% of all Lifeline participants. Assuming that the Commission knows best what services Lifeline-eligible customers should select is especially problematic because the dramatic changes to MSS will result in fewer, if any, choices being made available to these customers.

1. The Commission should not mandate broadband over voice services while disregarding consumer preferences

Currently, eligible Lifeline subscribers continue to choose voice services in significant numbers, but the phase out of Lifeline support for voice services scheduled to begin in December will dispense with that choice. As noted in the Joint Petition, nearly 42 percent of current Lifeline customers subscribe to plans that qualify for Lifeline by virtue of meeting the minimum

standards for voice service.³ Among TracFone’s Safelink customers, approximately 10 percent of current subscribers choose to have voice-only services when presented with the option of voice, broadband, or a bundled service. Because the government has decided these choices are not in their best interests, these subscribers will soon lose the ability to obtain the Lifeline-supported voice services they prefer. As Commissioner O’Rielly recognized in dissent to the *2016 Lifeline Reform Order*:

Some recipients might want a broadband connection to fill out a job application, but others might just want a simple voice service to use in case of emergency – the original purpose of the [Lifeline] program. The Commission calls such basic offerings “second class” service, but I imagine that those who will end up with no service at all might call them a Lifeline.⁴

2. The broadband MSS escalation will eliminate no-cost Lifeline offerings, thereby increasing the cost of Lifeline services for low-income consumers

On the broadband side, the MSS changes to be implemented in December will starkly undermine consumer choice. Lifeline subscribers overwhelmingly choose no-cost Lifeline services offered by mobile virtual network operators (“MNVOs”), but providers will not be able to offer no-cost service once the minimum data usage allowance increases to 8.75 GB per month on December 1, 2019.⁵ The enormous increase in required data will undoubtedly lead to increased and unaffordable costs for consumers. Current retail prices for comparable data plans bear this out. Wireless retailers typically retail 10 GB data plans for \$40 per month or more.⁶ The

³ Joint Petition at p. 9, citing USAC, High-Cost and Low Income Committee Briefing Book at 41 (April 29, 2019).

⁴ *Lifeline and Link Up Reform and Modernization*, 31 FCC Rcd 3962, ¶ 104 (2016) (“*2016 Lifeline Reform Order*”).

⁵ The Bureau’s July 25, 2019 Public Notice states that the Lifeline MSS for mobile broadband data usage will increase to 8.75 GB per month beginning December 1, 2019. *Wireline Competition Bureau Announces Updated Lifeline Service Standards and Indexed Budget Amount*. DA 19-704 (July 25, 2019).

⁶ For example, h2o Wireless currently offers a 10 GB plan with unlimited talk and text for \$60 per month. See <https://www.h2owirelessnow.com/plan/monthly> (last visited July 24, 2019). Metro by T-Mobile offers a 10 GB

new standards are thus likely to impose a \$30 per month price increase on Lifeline subscribers, an increase they can in no way afford. At the same time, consumer choice will be further limited by what is certain to be a mass exit of providers from the Lifeline market once costs associated with providing Lifeline-compliant broadband services skyrocket.

The significant increase in the cost of Lifeline broadband services will leave marginal low-income households without any viable broadband service options. TracFone's internal data show that only three percent of its customers can afford to purchase additional airtime. A recent empirical analysis by Dr. George S. Ford shows that the no-cost Lifeline service offered by wireless resellers is better able to target marginal low-income households that would not otherwise subscribe to broadband services in the absence of a Lifeline subsidy.⁷ These are households that will lack *any* viable broadband services if the no-cost option is eliminated. The Commission's plan for maintaining reasonably comparable service for Lifeline subscribers is thus likely to backfire entirely, leaving would-be Lifeline subscribers without any services at all.

B. The MSS Are Anticompetitive Because They Unfairly Impact the Business Model of MNVOs.

In addition to removing options that Lifeline subscribers prefer and choose presently, the changes to the MSS that are scheduled to be implemented in December are anticompetitive and anti-innovation. Resellers like TracFone pioneered the no-cost Lifeline service that has been wildly popular with low-income consumers. Under the no-cost plan, consumers are able to obtain voice, text, and/or data services plus a free handset without the need to sign any additional

high speed plan for \$40 per month. See <https://www.metrobyt-mobile.com/shop/plans> (last visited July 24, 2019). Virgin Mobile offers a 10 GB plan for \$45 per month. See <https://www.virginmobileusa.com/plans> (last visited July 24, 2019).

⁷ George S. Ford, Phoenix Center Policy Paper No. 55: A Fresh Look at the Lifeline Program, pp. 3-5 (July 2019).

contract or spend any additional resources to obtain the service. If a consumer wishes to obtain more than the minimum monthly voice or data allowed under the no-cost plan, they can purchase pre-paid cards to supplement their voice or data needs. Lifeline services offered by wireless resellers thus follow a pre-paid business model with no monthly bills for consumers – a model preferred by most Lifeline consumers.

This innovative service plan will be untenable, however, under the new MSS because it will simply not be affordable for providers to offer a no-cost plan that meets the new standards. As a result, Lifeline wireless resellers will have to offer plans that charge low-income consumers a co-pay in order to cover the costs of offering the Lifeline service, which means they will have to adopt a post-paid business model. To stay in the Lifeline program, TracFone and other wireless resellers will be forced to incur significant additional costs such as investing in brand new billing systems in order to transform themselves from pre-paid phone companies to post-paid phone companies. Like the current wireline Lifeline offerings, Lifeline offered by wireless resellers will be nothing more than a \$9.25 discount on a consumer's monthly post-paid bill. By forcing all Lifeline offerings into a post-paid business model, the MSS for wireless services unfairly targets the business model of Lifeline wireless resellers by eliminating their ability to continue to offer Lifeline as a pre-paid service.

III. THE MINIMUM SERVICE STANDARDS DO NOT SERVE THEIR INTENDED PURPOSE AND RISK WHOLESALE OBLITERATION OF THE LIFELINE PROGRAM

Intended to provide a “reasonable comparability” of services,⁸ the MSS are on track to wholly undermine the Lifeline program's overall goal of bringing affordable telecommunications

⁸ *Id.*, ¶ 44 (stating that MSS are being adopted “to ensure robust service levels for Lifeline subscribers ... which can be updated on a regular basis to that the support provided by the Lifeline Program continues to meet our statutory mandate to ensure ‘reasonable comparability’ of services.”).

services to low-income consumers. As the MSS impose skyrocketing cost increases for providers with no corresponding increase in the arbitrary \$9.25 subsidy, they will unavoidably lead to increased and unaffordable costs for eligible Lifeline subscribers. A pause in the implementation of the MSS is necessary for the Commission to fully reevaluate the role of MSS in the current market.

A. The Commission should address the current crisis in Lifeline participation and its connection to Minimum Service Standards in the Lifeline Marketplace Report.

Participation in the Lifeline program is in crisis. Since 2016, enrollment in Lifeline has decreased by 33%, and that decrease is due at least in part to the burdens of conforming to the increasing requirements of the MSS. Indeed, according to USAC's own data, since the FCC's adoption of the Lifeline Modernization Order in the Spring of 2016, 35 wireless Lifeline providers have left the program, potentially due in no small part to the escalating MSS that continued to make it less and less affordable for carriers to stay in the Lifeline market. In other cases, like TracFone's, the cost of compliance with the MSS has forced reductions in other areas directly impacting enrollment. As noted in its October 2018 Reply Comments in support of its Renewed Motion for Declaratory Ruling or for Waiver for the Purpose of Conducting a Market Test of Consumer Demand for Lifeline Service Offerings, TracFone, the nation's second-largest provider of Lifeline services, has been forced to reduce resources previously dedicated to marketing to new subscribers to the bare minimum required by the Commission's rules in response to the added costs presented by the escalating MSS.⁹ This comes at a time when marketing should be *increased* to compensate for the less consumer-friendly process of signing up new users that has accompanied implementation of the National Verifier program.

⁹ 2018 Reply Comments at 1-2.

B. The Lifeline Minimum Service Standards do not serve their intended purpose.

As the MSS increase, it becomes difficult and even impossible for providers to offer services at no cost to the consumer or at prices low enough to enable eligible customers to take advantage of the Lifeline program. The practical result of this is that the MSS, although designed to protect consumers, actually prevent eligible subscribers from obtaining essential Lifeline services. And this trend will only accelerate as the MSS become more burdensome.

The disconnect between the intentions behind the MSS and their practical effect has led Randolph May, president of the Free State Foundation, to support the Joint Petition's request to postpone the implementation of the December 2019 MSS changes.¹⁰ As Mr. May notes, because the Commission could not necessarily have predicted the present conditions at the time that it devised the MSS schedule, it is reasonable to postpone the implementation of the December 2019 changes given the pendency of the State of the Lifeline Marketplace Report.¹¹

C. The formula for determining the minimum data usage allowance is deeply flawed.

The reason the minimum data usage allowance is poised to increase so enormously in December is that the formula the Commission uses to determine the minimum data usage allowance required for Lifeline-supported plans is deeply flawed. Lifeline subsidies are restricted to one per household. The Commission does not subsidize multiple users or multiple devices within households.¹² But the Commission's formula unreasonably equates usage of that single

¹⁰ See Randolph J. May, A Reasonable Lifeline Postponement Request (June 29, 2019), *available at* <http://freestatefoundation.blogspot.com/2019/06/a-reasonable-lifeline-postponement.html>.

¹¹ *Id.*

¹² See 47 C.F.R. § 54.510(d)(1)(ii).

line to data usage by an entire household.¹³ It is irrational to base the amount of broadband capacity that must be provided to a single user of a single device on the amount of broadband capacity used by a family of multiple users across multiple devices, as the Commission’s formula does.

And although it makes sense to discount average household data usage in the formula to adjust for the fact that a “substantial majority” of subscribers use less data than the average, the 70 percent discount used in the Commission’s formula was not based on any data and is irrational.¹⁴ Indeed, the *2016 Lifeline Order* simply identifies 70 percent as a “reasonable value” without explanation while noting “the lack of public data on the exact shape of such usage distributions.”¹⁵ Because the formula used to calculate the minimum data usage allowance is irrational, the Commission must revisit the formula in the event that it determines that MSS are necessary as part of the Lifeline Marketplace Report.

D. The Commission must eliminate the phase-down for voice services for all consumers.

Rather than attempt to socially engineer particular results, the Commission should allow competition to dictate the types of service a consumer chooses to receive. It should not move to eliminate an essential service relied upon for years by millions of low-income consumers.

The best way to achieve the Commission’s goal of ensuring adoption of mobile data services by Lifeline consumers is to ensure sufficient subsidy levels to attract providers that will compete. The positive effect of competition can be seen in California. That state offers generous

¹³ See 2016 Lifeline Order at ¶ 94 (stating that, following the phase-in of mobile data usage allowance standards, “the minimum service standard for mobile broadband data usage allowance will be 70 percent of the calculated average mobile data usage *per household*.”) (emphasis added).

¹⁴ *Id.* at n. 274.

¹⁵ *Id.*

Lifeline subsidies in addition to the federal subsidy, and vibrant competition has emerged among Lifeline providers as a result. For example, eight Lifeline providers serve the zip code 90210, six Lifeline providers serve the zip code 94601, and seven Lifeline providers serve the zip code 91902.¹⁶

In other states where only the \$9.25 federal subsidy for Lifeline services is available, competition is less robust and fewer offerings are available, with some providers forced to offer voice-only services with minimal data components. In New Hampshire, for example, only between two and four Lifeline providers serve zip codes 03101, 03263, and 03854, and one of these provides a voice-only service.¹⁷ Continuing with the reduction and then elimination of Lifeline subsidies for voice services will simply drive these providers out of the marketplace; it will not replace them with competitors vying to provide mobile data services in these states.

IV. CONCLUSION

TracFone supports the Joint Petition and urges the Bureau and Commission to pause implementation of the Lifeline MSS increases that are scheduled to take place in December 2019 until the Commission has released the State of the Lifeline Marketplace Report.

¹⁶ Data available at www.californialifeline.com/en/prover_search (last visited July 24, 2019).

¹⁷ Zip code-based provider searches performed at <https://data.usac.org/publicreports/CompaniesNearMe/Download/Report> (last visited July 26, 2019). Access wireless, a Lifeline provider for zip code 03101, offers a plan that includes free long distance but no texting or broadband minutes. See <https://www.accesswireless.com/lifeline/state?zipcode=03101> (last visited July 26, 2019). For New Hampshire services offered by other Lifeline providers, see <https://www.safelinkwireless.com/Enrollment/Safelink/en/Web/www/default/index.html#!/planFeatures> (SafeLink); <https://www.assurancewireless.com/lifeline-services/states/new-hampshire-lifeline-free-government-phone-service> (Assurance); <https://www.consolidated.com/support/residential-support/lifeline-assistance-programs> (Consolidated). (All websites last visited July 26, 2019).

Respectfully Submitted,

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